IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7152 of 1998

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAYMAL THAKORE

Versus

CHARITY COMMISSIONER

Appearance:

MR KA PUJ for Petitioner
MR GM JOSHI for Respondent No. 1
MR AR GUPTA for Respondent No. 2
MR SN SOPARKAR for Respondent No. 3
MR GIRISH D BHATT for Respondent No. 4

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI
and
MR.JUSTICE K.R.VYAS

Date of decision: /06/2001

C.A.V. JUDGEMENT

(Per : CHIEF JUSTICE MR DM DHARMADHIKARI)

#. The petitioner is a Chartered Accountant and in his professional capacity claims a right to represent his clients both as "recognised agent" and a "Pleader" under a duly executed power of attorney in his favour in proceedings before the Charity Commissioner under Section 50A of the Bombay Public Trust Act, 1950 (hereinafter referred to as `the Act') which admittedly is applicable to the State of Gujarat.

#. This case was to be heard and decided by the learned Single Judge, but finding that the question involved is of some general importance, it has been referred for decision by the Division Bench.

#. In exercise of powers under Section 50A of the Act, the Charity Commissioner is empowered to frame and settle a scheme of management of a public trust after giving opportunity of hearing to the trustees and by public notice to the beneficiaries. Under Sub-section (4) of Section 50A, after hearing the parties and recording evidence, a scheme framed and settled for management of the trust by the Charity Commissioner is said to have effect as a "decree" of a court passed under Section 50, when the Civil Court is approached for preparing such a scheme of management in accordance with the procedure laid down in the said Section 50.

#. Since there were some arguments addressed at the Bar on the question of nature of the proceedings under Section 50A before the Charity Commissioner and particularly as to whether they can strictly be called `judicial proceedings' or `quasi-judicial proceedings', it is necessary to reproduce the relevant provisions of Section 50A of the Act:-

"Section 50A

Power of Charity Commissioner to Frame, Amalgamate or Modify Schemes

(1) Notwithstanding anything contained in Section 50, where the Charity Commissioner has reason to believe that, in the interest of the proper management or administration of a public trust, a scheme should be settled for it, or where two or more persons having interest in a public trust make an application to him in writing in the prescribed manner that, in the interest of the

proper management or administration of a public trust, a scheme should be settled for it, the Charity Commission may, if, after giving the trustee of such trust due opportunity to be heard, he is satisfied that it is necessary or expedient so to do, frame a scheme for the management or administration of such public trust.

(2) xx xx xx xx

(3) xx xx xx xx

(4) The scheme framed under sub-section (1) or sub-section (2) or modified under sub-section (3) shall, subject to the decision of the competent Court under Section 72, have effect as a scheme settled or altered, as the case may be, under a decree of a Court under section 50."

#. The decision of Charity Commissioner under Section 50A in the matter of framing of a scheme of management is subject to judicial scrutiny by a Civil Court on an Application to be made by aggrieved party under Section 72)(1) of the Act, although, such grievance by Application against decision of Charity Commissioner is available on restricted grounds relating to the existence of the trust or as to whether any property is trust property or not. Sub-section (1A) of Section 72 restricts decision of the Application of a Civil Court on the evidence adduced before the Charity Commissioner and permits production of additional evidence only when such evidence was unreasonably not allowed to be led before the Charity Commissioner. Under Sub-section (4) of Section 72, the decision of Civil Court on the Application against decision of the Charity Commissioner is open to Appeal to the High Court as a decree. The Explanation appended below Section 72 is also of importance as it states that the expression "decision" shall include a scheme framed or modified under Section 50A. Relevant provisions of Section 72 also deserve to be reproduced for considering the nature of proceedings before the Charity Commissioner:-

"Section 72

Application from Charity Commissioner's decision under Sections 40, 41, 50A, 70 or 70A etc.

(1) Any person aggrieved by the decision of the Charity Commissioner under Sections 40, 41, 50A, 70 or 70A or on the questions whether a trust exists and whether such trust is a public trust or whether any property is the property of such trust may, within sixty days from the date of the decision, apply to the Court to set aside the

said decision.

Application from Charity Commissioner's decision under Sections 40, 41, 41C and 43(2)(a) and (c), 50A, 70 or 70A etc.

(1A) No party to such application shall be entitled to produce additional evidence, whether oral or documentary, before the Court, unless the Deputy or Assistant Charity Commissioner or the Charity Commissioner has refused to admit evidence which ought to have been admitted or the Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment or for any other substantial cause the Court thinks it necessary to allow such additional evidence:

Provided that whenever additional evidence is allowed to be produced by the Court, the Court shall record the reason for its admission.

(2) xx xx xx xx

(3) xx xx xx xx

(4) An appeal shall lie to the High Court against the decision of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies.

Explanation- In this Section, the expression "decision" of the Court under sub-section (2) as if such decision was a decree from which an appeal ordinarily lies."

#. Section 73 of the Act confers powers of the Civil Court as are available under Code of Civil Procedure in holding enquiries under the Act. It reads thus:

"Section 73

Officers holding Inquiries to have powers of Civil Court

In holding inquiries under this Act, the officer holding the same shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit:

(a) xx xx xx xx

(b) xx xx xx xx

(c) compelling the production of documents."

#. Section 74 states that all enquiries and appeals under the Act shall be deemed to be judicial proceedings within the meaning of Sections 193, 219 and 228 of the Indian Penal Code.

#. In exercise of rule making power under the Act, The Bombay Public Trusts Rules, 1951 (hereinafter referred to as `the Rules') have been framed and are also applicable to the State of Gujarat. The procedure before the Charity Commissioner is to be the same as to be adopted in trial of suits by a Court under the Provincial Small Cause Courts Act, 1887 (hereinafter referred to as `the Act of 1887'). Rule 7 of the Rules lays down the procedure and manner of enquiries. It reads thus:

> 7. Manner of inquiries.- Except as expressly provided in these rules, inquiries under the Act shall be held, as far as possible in accordance with the procedure prescribed for the trial of suits under the Presidency Small Causes Courts Act, 1882, where that Act is in force and elsewhere under the Provincial Small Causes Courts Act, 1887. In any enquiry, a party may appear in person or by his recognised agent or by a pleader duly appointed to act on his behalf:
>
> Provided that any such appearance shall, if the Deputy or Assistant Charity Commissioner so directs, be made by the party in person."

#. The procedure before the Charity Commissioner has to be the same as the procedure for trial of suits by a court under the Act of 1887 and therefore the provisions of the Act of 1887 are required to be examined. Section 17 of the Act of 1887 adopts the procedure of Code of Civil Procedure to full extent excepting special provisions or procedures laid down in the said Act. Section 17(1) of the Act of 1887 reads as under:-

> 17. Application of the Code of Civil Procedure -
>
> (1) The Procedure prescribed in the Code of Civil Procedure, 1908, shall, save in so far as is otherwise provided by that Code or by this Act, be the procedure followed in a Court of Small Causes in all suits cognizable by it and in all proceedings arising out of each suits:
>
> Provided that an applicant for an order to set aside a decree passed ex parte or for a review of judgment shall, at the time of presenting his application, either deposit in the Court the amount due from him under the decree or in pursuance of the judgment, or give such security for the performance of the decree or compliance with the judgment as the Court may, on a previous application made by him in this behalf, have directed.
>
> (2) xx xx xx xx"

##. Learned counsel who appeared on a notice to the Bar Council of Gujarat brought to the notice of this Court that since this case arises from City of Ahmedabad, the Ahmedabad City Courts Act, 1961 read with Ahmedabad Small Cause Courts Rules would be applicable. The relevant Rule 1 in Part I of the Ahmedabad Small Cause Courts Rules is also to the same effect where also the provisions of Civil Procedure Code have been adopted for proceedings before the Small Cause Courts. The relevant Rule 1 of the Ahmedabad Small Cause Courts Rules is similarly worded and so far as the procedure to be adopted before the Charity Commissioner is concerned it is analogous to procedure before the Small Causes Court and is in no manner different as laid down in Section 17 of the Act of 1887 and Rule 1 of Ahmedabad Small Cause Courts Rules. It reads as under:-

"1.(1) These rules may be cited as the Ahmedabad Small Cause Court Rules and shall come into force on the 4th day of November, 1961.

(2) The positions of the Code of Civil Procedure, Act V of 1908, as modified upto 4th November 1961 in its applications to the State of Gujarat specified in the last column of the schedule hereto annexed shall, subject to the additions, alterations and modifications specified in the 2nd column of such schedule; extend and shall be applied to the Small Cause Court and the procedure prescribed thereby shall be the procedure followed in the Court in all suits cognizable by it except where such procedure is inconsistent with the procedure prescribed by any specific provisions of the Presidency Small Cause Courts Act, 1882, or with these rules."

##. On the legal question raised before us by the petitioner for claiming full right of participation and audience on behalf of his client before the Charity Commissioner, we find it not very necessary to express any final conclusion as to whether the proceedings under Section 50A of the Act before the Charity Commissioner can be strictly called `judicial proceedings' or `quasi-judicial proceedings'. What we find from the above discussed provisions of the Act read with the Act of 1887 and the Code of Civil Procedure is that in holding enquiries and taking decisions, the Charity Commissioner has to follow the procedure applicable to a Civil Court in trial of suits. The proceedings, therefore, before him have all the trappings of a regular Court. In framing a scheme, modifying it and in taking a

decision in that regard, he has to hear the parties, record their evidence and take a formal decision which is subject to scrutiny by a Civil Court under Section 72(1) of the Act. The decision of Civil Court is subject to Appeal to the High Court. There is, thus, a hierarchy of Courts created under the Act. Before the Charity Commissioner in the course of framing of a scheme, there is likelihood of raising of disputes on the nature of trust and trust properties and he has to record a formal decision on the basis of evidence and material led before him. It can be held that the proceedings before the Charity Commissioner if not strictly `judicial proceedings' are quasi-judical.

In the above respect see decision of the learned Single Judge of this Court in Shri Bipinchandra Purshottamdas Patel and others v. Jashwant Lalbhai Naik and another AIR 1974 Guj 129. In the case (supra) the proceedings under Section 50A before the Charity Commissioner are held to be of quasi-judical character.

##. Having thus considered the nature of proceedings before the Charity Commissioner and the procedure of Code of Civil Procedure that he has to follow in taking a decision in the matter of framing of a scheme of management under Section 50A, the right of parties and their agents to participate in the proceedings before him have to be examined. As has been pointed out above, the Civil Procedure Code is applicable in the proceedings before the Charity Commissioner for recording evidence and for allowing appearance of the parties. The provisions of Order III Rule 1 of the C.P.C. allow appearances, filing of applications and acts by the parties, by their recognised agents and pleaders in the manner laid down therein. Order III Rule 1 uses three different expressions having three different connotations, i.e. "party in person", "recognised agent" and "pleader". The relevant provisions of Order III Rule 1 and 2 read as under:-

"RECOGNIZED AGENTS AND PLEADERS

1. Appearances, etc. may be in person, by recognized agent or by pleader-

Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader appearing, applying or acting, as the case may be, on his behalf:

Provided that any such appearance shall, if the Court so directs, be made by the party in person.

2. Recognized agents- The recognized agents of parties by whom such appearances, applications and acts may be made or done are:-

(a) persons holding powers-of-attorney, authorizing them to make and do such appearances, applications and acts on behalf of such parties;

(b) persons carrying on trade or business for and in the names of parties not resident within the local limits of the jurisdiction of the Court within which limits the appearance, application or act is made or done, in matters connected with such trade or business only, where no other agent is expressly authorized to make and do such appearances, applications and acts."

##. What is to be noticed from the provisions of Rule 1 of Order III quoted above is that the appearances, applications or acts in the Court are to be done by the party in person or by his recognised agent or by a pleader. Under rule 2 of Order III "recognised agents" have been described to be those persons holding power of attorney from the party authorising them to make such appearances and file such applications or do prescribed acts. The Legislature and the Courts have distinguished "recognised agent" from a "pleader". The expression "pleader" whereever used in the Code including in Rule 1 has to be understood as per the definition clause contained in Section 2(15) of the C.P.C. which defines pleader as under to include an advocate, vakil and attorney of a High Court:

"2. Definitions - In this Act, unless there is anything repugnant in the subject or context-

(1) to (14) xx xx xx

(15) "pleader" means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;

(16) to (20) xx xx xx"

##. The provisions of Order III Rule 1 and 2 repeatedly came for construction and application before law courts in civil proceedings. For the purpose of this case, reference to one of the earlier decisions of Chhagla C.J. in Aswin Shambhuprasad Patel and others v. National Rayon Corporation Ltd. AIR 1955 Bom 262 would be profitable. Construing the provisions of Order III Rule 1, it was held that the expression "appearance,

application or act" in or to any court in Order III Rule of C.P.C. does not include pleading. The recognised agent under power of attorney from the party in his favour may appear, file an application or act on behalf of the party in the proceedings as "recognised agent" of the party. Such power or authority to appear, file application and act is also available to a `pleader', but to plead in the case, that is to do something for the party in the case other than what the `recognised agent' can do, that is to practice law or plead for the client, is the monopoly right only of a pleader or a registered advocate. A `recognised agent' appointed by a party may be holding a duly executed power of attorney cannot be said to be a `pleader' and can have no right to plead. The provisions of Advocates Act, 1961 confers a monopoly right of pleading and practicing law only on enrolled or registered advocates. Section 30 of the Advocates Act confers such a right to practice on a `pleader' and/or `advocate' after he gets himself enrolled as such. Section 30 reads:-

"30. Right of advocates to practise. - Subject to the provisions of the Act, every advocate whose name is entered in the State roll shall be entitled as of right to practise throughout the Territories to which this Act extends, -

(i) in all Courts including the Supreme Court;

(ii) before any Tribunal or person legally authorized to take evidence; and

(iii) before any other authority or person before whom such advocate is by or under any law for the time being in force entitled to practise."

##. Section 33 of the Advocates Act confers an exclusive and monopoly right on the enrolled advocate or pleader to plead and practice in court of law. The said provision contained in Section 33 reads:

"33. Advocates alone entitled to practise.- Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any Court or before any authority or person unless he is enrolled as an advocate under this Act."

##. The provisions of Section 32 of the Advocates Act are also required to be noticed in this context which reserves a discretion and power to the court only to permit appearances to any non-advocate for a party. It may be noted that Section 32 also does not confer any

power and discretion on the court to permit any non-advocate to plead or practise law in a court. Section 32 restricts the powers of the court to permit any non-advocate only to appear on behalf of a party. See the language of Section 32 quoted hereunder:

> "32.Power of Court to permit appearances in particular cases.- Notwithstanding anything contained in this chapter, any Court, authority or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case."

##. When the petitioner as a Chartered Accountant and a holder of power of attorney conferring on him all rights to act, appear and plead on behalf of his client sought such permission, the Charity Commissioner allowed him to act as a `recognised agent', but refused to allow him to plead and practise as a pleader or an advocate. The relevant part of his order which is under challenge at the instance of petitioner in this case needs reproduction (as rendered in English):

> "For the reasons recorded as above, it is consequently ordered in the matter of enquiry application No. 1/92 filed in this Office under Section 50A of the Bombay Public Trusts Act, wherein the Chartered Accountant Shri Jaimal Thakore has appeared with the Authority letter and authority executed on stamp paper on behalf of six trustees of Nawawas Rajpur Hirpur Timba Education Trust which has been registered as a public trust under registration no. E/2441/Mehsana, that the authority to act as an advocate, besides appearing, which has been given under the document, there is no provision for any party to give authority to any individual other than an advocate to act as an advocate and since there is a provision under Rule 7 of the Rules framed under the Public Trusts Act for an authorised agent and pleader to appear, he can appear on behalf of the six trustees for whom he has appeared, in this matter of enquiry but it is held that he does not thereby acquire a right to plead therein and therefore, Shri Jaimal Thakore himself can only appear on behalf of the said trustees and he, as the authorised agent acquires an authority to sign on behalf of the original parties; to submit reply and documents and to do the act of adducing evidence and he cannot do the act of taking examination in chief or cross

examination. Also he cannot address the authority i.e., the Charity Commissioner, before whom this proceeding is pending. It is held that he does not acquire the right of examining witnesses in court and of addressing the court as is being done by a pleader in a court. This application is accordingly granted.

Further, for the reasons stated above, since this case does not become a special case wherein an individual can be granted permission to plead and address the court in the manner in which a pleader can do by appearing, even though Shri Thakore has been authorised to act as a pleader in the authority letter executed in his favour, he is not permitted to appear for the purpose of conducting the matter.

Considering the facts, no orders as to costs. It is directed that this Application shall now proceed further."

##. From the contents of the above order of the Charity Commissioner, it is to be noticed that he has rightly seen the distinction between the right of a `recognised agent' and the right of a `pleader' or an `advocate' to practise law and plead for a party. The Charity Commissioner, therefore, has stated that the petitioner being a holder of power of attorney and therefore as a `recognised agent', can appear on behalf of a party, can file documents or affidavits, can submit reply, but he cannot act as a `pleader', in the sense that he cannot cross-examine the witnesses or argue the matter on behalf of his client which are acts in the nature of pleading or practising law within the exclusive monopoly of only enrolled advocates. Such exclusive monopoly to practise law and to plead in a court had been conferred on an enrolled advocate under the Advocates Act with an important social object to maintain the proper court culture by subjecting such an advocate to the disciplinary action whenever required through the disciplinary committees constituted thereunder for the purpose. The view that we are expressing herein fully accords with the view expressed by the learned Single Judge of this Court. in case of Chief Executive Officer and Vice-Chairman, Gujarat Maritime Board v. Deceased Patel Gandu Paba, through Legal Heir Jivitiben Gandubhai and Others 1998(2) GLH 209. In that case the authorised officer holding post of Deputy Collector in the Gujarat Maritime Board sought to enforce his right of appearance both as an agent and pleader in the cases on behalf of

Gujarat Maritime Board. Such right claimed was negatived by the learned Single Judge by interpreting provisions of Order III Rule 1 of the C.P.C. in the manner as stated by us above. It has been held that right of a recognised agent does not extend to encroach upon the exclusive and monopoly right of pleading and practising law of an enrolled advocate. The recognised agent can appear, file applications, or act on behalf of a party, but he cannot be allowed to plead and practice law in a court. The decision of Chhagla, C.J. (supra) was referred to and relied upon by the learned Single Judge. Similar view was expressed by Justice Jagannath Rao, J (as he then was) in the Andhra Pradesh High Court in a decision reported in Hari Om Rajender Kumar and others v. Chief Rationing Officer of Civil Supplies, A.P. Hyderabad AIR 1990 AP 340. Relying on the decision of the Supreme Court in Aswini Kumar Ghosh v. Arabinda Bose AIR 1952 SC 369 and of Madras High Court in Thayarammal v. Kuppuswami Naidu AIR 1937 Madras 937 it was held that expression "to appear", "to act" would not permit a recognised agent "to practise" as used in Section 33 and 32 of the Advocates Act. The provisions of Order III Rule 1 and Section 32 and 33 of the Advocates Act have been construed thus:-

> "It has to be noticed that Section 33 of the Act uses the word `practise' while Section 32 uses the word `to appear' in the Courts etc. The word `practise' means appear, act and plead, unless there is anything in the subject or context to limit its meaning. Therefore, the word `appear' is only one aspect and does not take in the concept of `pleading' without which, it cannot be equated to `practising'. The right to appear in Court and plead for a principal as also the right to practise in Courts have to be distinguished from the other acts, which a power of attorney can perform under Order 3, Rule 1, C.P.C. So far as the signing or verifying or doing other acts are concerned, these could be done by the power of attorney duly authorised therefore but so far as appearing or practising in Court are concerned, they are subject to the provisions of Section 32 and 33 of the Advocates Act. As such the power-of-attorney holder cannot plead or practise in Court for a principal unless specially authorised by the Courts in that behalf under S. 32 of the Advocates Act (1961)"

##. The learned counsel appearing for the Charity Commissioner has very fairly submitted that he can have

no objection to the petitioner's appearance qua a recognised agent under a power of attorney from the party in the case, but he could certainly have a serious objection on the petitioner's claiming a right of audience in his professional capacity as Chartered Accountant so as to encroach upon the monopoly right of `pleaders' or `advocates' to plead and practise law before judicial and quasi-judicial forums. After hearing counsel for the parties, we have formed an opinion that the Charity Commissioner was right in restricting the role of the petitioner in proceedings before him under Section 50A to `recognised agent' of the party and refusing to allow him to act as `pleader' or an `advocate' as contemplated by the provisions of the Advocates Act. In conclusion, we find, therefore, no error in the reasoning and conclusion of the Charity Commissioner in the order impugned before us.

##. Consequently, the Petition fails and is hereby dismissed. Rule is discharged. There shall be no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

(K.R. VYAS, J.)

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